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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW JORGENSON

Defendant and Appellant.

A123368

(Super. Ct. for the City & County of
San Francisco, No. 206366)

Following defendant's entry of a plea of guilty to a violation of Health and Safety Code section 11532, a misdemeanor count of loitering in a public place with the intent to commit a drug-related offense, he was sentenced. As a result of the plea, defendant was sentenced to probation with various conditions, including serving 75 days in the county jail with appropriate credits. His appellate counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file a supplemental brief, but has not done so. Upon independent review of the record, we conclude that no arguable issues are presented for review, and affirm the judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On August 6, 2008, Officer Mitchell Campbell of the San Francisco Police Department noticed defendant idling on the ground outside the fence of a playground located near 100 Collingwood Avenue in San Francisco. The time was 7:30 a.m. While

no children were in the vicinity of the playground at the time, the officer decided to approach defendant and determine what his purpose was. As Officer Campbell came within 15 feet of defendant, he noticed defendant had a condom in his hand. The police officer saw that defendant had a pouch, backpack, and pencil on the ground within his immediate presence. Campbell believed it unusual for an adult to be near a playground with a condom. The officer decided to check out if defendant was a registrant under Penal Code section 290.

As the officer came closer, the defendant began gathering his property and tried to stand up. The police officer told defendant to remain seated and identify himself. At first, defendant did not provide his name, but then complied with the request. While running defendant's name over police radio, Officer Campbell scooted the pencil away from defendant because of concern it could be used as a weapon. Defendant flung his arms away from Officer Campbell, freeing himself from the police officer's grip. Defendant then ran away from the officer. Approximately two minutes elapsed between the time defendant was observed by the officer and defendant's flight from Campbell's presence.

As defendant ran away, Officer Campbell yelled for him to stop. Defendant refused to stop. After chasing defendant for a block, Campbell caught up and pushed defendant to the wall. The two men struggled until a second officer, Holder, arrived and assisted in cuffing defendant.

Once subdued, Officer Springer pat searched defendant and found a brown pill bottle containing pills on defendant's person. The pills were found to be morphine and dronabinol. A radio dispatch, received after the discovery of the pills, indicated defendant had a warrant out of San Mateo County for \$10,000 and that defendant was on probation with a search condition.

On August 14, 2008, defendant filed a motion to suppress evidence seized during his arrest. This was filed before the preliminary hearing in the matter. On August 22, 2008, the magistrate denied the motion to suppress after the lone witness, Officer Campbell, testified. Defendant did not testify at the hearing. The magistrate held

defendant to answer for the felony charges of possession of morphine and a second count of possession of dronabinol, both violations of Health and Safety Code section 11350. Defendant was also charged with a misdemeanor violation of section 148 of the Penal Code, resisting or obstructing an officer in the performance of his duties.

On October 20, 2008, defendant entered into a negotiated disposition of his case with the prosecution. He agreed to plead guilty to one count of a misdemeanor violation of section 11532 of the Health and Safety Code. The charges in the information would be dismissed. He was to receive a probationary sentence with the transcript of the preliminary examination serving as the factual basis for the plea. In taking the plea, the trial court advised defendant of his *Boykin-Tahl*¹ rights. Sentenced on the same day as the plea, defendant was placed on three years of probation, with a condition he serve 75 days in the county jail with 75 days' credit, certain fines were imposed and a stay-away order issued.

DISCUSSION

As a general rule, Penal Code section 1237.5 precludes an appeal from a judgment of conviction after a plea of guilty unless the defendant has applied to the trial court for a certificate of probable cause for such an appeal and the trial court has executed and filed such a document. However, appellate courts have tolerated an appeal if the issue is the validity of a search and seizure, for which appeal is proper under Penal Code section 1538.5 subdivision (m); or issues relating to proceedings subsequent to the plea for purposes of determining the degree of the crime or the penalty imposed. (*People v. Shelton* (2006) 37 Cal.4th 759, 766; see also *People v. Buttram* (2003) 30 Cal.4th 773, 780.) Here, the defendant has not requested nor obtained a certificate of probable cause, so he is not able to challenge the validity of the plea or any other matter that preceded the entry of his plea. (*People v. Cole* (2001) 88 Cal.App.4th 850, 868.)

We have reviewed the transcript of the motion to suppress that was heard by the magistrate at the preliminary hearing. The record reflects that Officer Campbell acted

¹ *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

appropriately in approaching the defendant as he was lingering in the area of the playground at 7:30 a.m. The officer saw defendant with a condom as he approached and correctly wanted to check out the identity of the defendant. Any concerns regarding registration under Penal Code section 290 were reasonable. The intrusion here was for two minutes according to the officer before defendant bolted from the officer. Defendant did not obey the command of Campbell to stop and the chase lasted for approximately one block. The arrest under Penal Code section 148 was proper under the circumstances, as was found by the magistrate and also the trial court at a Penal Code section 995 hearing. The drugs were found incident to the arrest. Additionally, the officer determined defendant had a search condition, but after the discovery of the illegal drugs. Also, the identity check revealed defendant had an active warrant for \$10,000 from San Mateo County.

We find the investigation here was proper on its facts. The flight by defendant triggered an arrest under Penal Code section 148. The drugs were found as a result of a search incident to arrest. The existence of the outstanding warrant provides an independent circumstance for defendant's arrest, as the radio check of his name produced the existence of the warrant and the intrusion here was for two minutes approximately, a limited period of time under these circumstances.

There are no sentencing errors. Nothing in the record shows the trial court improperly considered evidence or imposed an unauthorized sentence.

Defendant was represented by competent counsel throughout the case.

After a full review of the record, we find no arguable issues and, therefore, affirm the judgment.

Dondero, J.

We concur:

Margulies, Acting P. J.

Banke, J.